

EXHIBIT D

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 10 JOBY, INC.

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION
 15

16 JOBY, INC.,

17 Plaintiff,

18 v.

19 TOCAD AMERICA, INC.,

20 Defendant.
 21

Case No. 3:07-CV-06455 (SI)

**DECLARATION OF JOEBEN BEVIRT
 IN SUPPORT OF JOBY, INC.'S
 MOTION FOR A PRELIMINARY
 INJUNCTION**

Date: May 2, 2008

Time: 2:00 p.m.

Courtroom: 10, 19th Floor

The Honorable Susan Illston

22 I, JoeBen Bevirt, declare as follows:

23 1. I am the Founder and President of Joby, Inc. I make this declaration based upon
 24 my personal knowledge, and if called upon to testify, could and would testify competently to the
 25 matters set forth below.

26 2. I have a master's degree in mechanical engineering from Stanford University.
 27 While I was studying for my graduate degree, I came up with the idea for a flexible tripod with
 28

1 rotating joints that would allow the tripod to be used in locations where conventional, rigid-leg
2 tripods could not be used. I founded Joby in 2005 to further develop and produce this flexible
3 camera tripod.

4 **Joby's Gorillapod**

5 3. Joby has its headquarters in San Francisco, California, and currently employs 44
6 people worldwide. The company's first product was the Gorillapod – a tripod with flexible legs
7 that enable it to secure itself to virtually any surface anywhere, such as a tree branch, a pole, or
8 jagged rock. I have attached as Exhibit A images of the Gorillapod secured to these kinds of
9 surfaces.

10 4. Joby wanted the tripod's look and its name to suggest nimble, creature-like
11 qualities. We chose an animal name – “Gorillapod” – for the product, and I designed its exterior
12 to make it look like a little animal. The Gorillapod has a body section and three legs made of
13 rounded segments (or “balls”) connected together. Each of the segments in the legs has a ring
14 around the middle in a color that contrasts with the color of the segment, and each segment ends
15 in a rounded “foot.” The rounded body, the rounded leg segments, the rounded feet, the
16 proportions we selected for the body, legs and feet, and the contrasting rings give the tripod a
17 playful, striped look. The contrasting colors on the feet and the rings also serve to highlight the
18 tripod's movements.

19 5. Joby's first Gorillapod was designed to support a compact digital camera. An
20 early prototype of the original-size Gorillapod was shown at the Consumer Electronics Show held
21 in Las Vegas in January 2006. We began offering this Gorillapod for sale in February 2006. At
22 that time, there was one other flexible tripod on the market, which looked something like the
23 tripod shown in Exhibit B, but professional and amateur photographers alike relied primarily on
24 conventional, rigid-leg tripods, such as the tripod shown in Exhibit C. None of the tripods then
25 being marketed to the general public, or to professional photographers, looked anything like the
26 Gorillapod.

27 6. In August 2006, Joby began offering a larger tripod, the Gorillapod SLR, which
28 can support video cameras and lightweight SLR cameras weighing up to 1.75 lbs. In October

1 2006, we added the Gorillapod SLR-Zoom, which can support professional SLR cameras with
2 zoom lenses weighing up to 6.6 lbs. The original Gorillapod can also be used with handheld
3 devices (such as cell phones and PDAs), and the Gorillapod SLR can also be used with camera
4 accessories (such as a flash). Currently, the Gorillapod is sold in three different sizes and six
5 different color combinations, as shown in Exhibit D. The Joby name appears on the face of the
6 round quick release button on the top portion of every Gorillapod.

7 7. All versions of the Gorillapod are made using high-quality plastic and rubber.
8 They are molded using custom tooling and a double-injection process that minimizes the “flash”
9 (*i.e.* excess material that protrudes between the two surfaces of the mold) on the finished product
10 and produces a secure bond between the plastic and rubber. We invested a significant amount of
11 time and effort trying to find a factory that could manufacture our product to meet our quality
12 specifications. We tried four different factories before we found one that could produce the high
13 quality product we wanted.

14 **The Gorillapod’s Success**

15 8. The Gorillapod has been extremely successful. To date, Joby has sold more than
16 one million Gorillapods since its first sale in February 2006. The product is sold through Joby’s
17 own online store (www.joby.com), through well-known camera equipment retailers, such as
18 Adorama and B&H Photo-Video, and through other well-known retailers, such as Best Buy,
19 Amazon.com, Eddie Bauer, Red Envelope and REI. The Gorillapod is also sold through camera
20 and outdoor equipment distributors worldwide. It is sold in both packaged and unpackaged
21 forms. Joby uses clear plastic in its packaging, so that the Gorillapod is visible to the purchaser
22 when the product is sold in packaged form. Inside the packaging, the Gorillapod is wrapped
23 around a cardboard “branch,” and the back of the packaging includes images of the Gorillapod in
24 action (*e.g.*, perched on a rock). I have attached as Exhibit E a sample of the original Gorillapod
25 in its packaging.

26 9. Joby has also invested heavily in advertising and promotion of the Gorillapod.
27 Since February 2006, Joby has shown the Gorillapod at seventeen trade shows and spent over
28 \$1 million on advertising and promotion of the Gorillapod. In addition, our distributors and

1 retailers, with financial incentives provided by Joby, have spent an estimated \$500,000 to
2 advertise and promote the Gorillapod. This advertising and promotion always includes images of
3 the Gorillapod and typically emphasizes the product's fun, animal-like qualities, as in the
4 animation on the home page of Joby's web site at www.joby.com, for example. I have attached
5 as Exhibit F a screen capture of Joby's home page.

6 10. The Gorillapod has received enthusiastic reviews and extensive press coverage
7 during the past two years. Since its launch in early 2006, the Gorillapod has been featured in over
8 30 reviews and articles in a wide range of media geared to photography buffs, such as Popular
9 Photography, Shutterbug, Outdoor Photographer and Amateur Photographer, and to the general
10 public, such as CNET, Gizmodo.com, Wired Magazine, National Geographic and The New York
11 Times. The Gorillapod has also been featured on popular television programs, such as Good
12 Morning America and The Rachel Ray Show. A collection of the reviews and articles about the
13 Gorillapod are attached as Exhibit G. A collection of the videos about the Gorillapod are attached
14 as Exhibit H.

15 11. Even during the product's first nine months, before Tocad introduced its flexible
16 tripod, the Gorillapod enjoyed great success. From February through October 2006, Joby sold
17 approximately 160,000 Gorillapods and received rave reviews from, among others, CNET,
18 Popular Photography, Shutterbug, Wired Magazine and Gizmodo.com. The tripod was also
19 featured on the television program Good Morning America. During the first nine months after
20 launch of the Gorillapod, we promoted the product at four trade shows and spent approximately
21 \$178,000 on advertising and promotion in print and in other media. All of the articles, reviews,
22 advertising and promotion included images of the Gorillapod and mentioned the Joby company
23 name.

24 **Tocad's Knock-Off of the Gorillapod**

25 12. Tocad introduced its knock-off of the Gorillapod, called the FlexPod, in late 2006.
26 I carefully examined a sample of the FlexPod. The quality of this product is inferior to Joby's
27 Gorillapod. The FlexPod looks just like the Gorillapod, but it uses a low quality, cheaper plastic
28 than what we use for the Gorillapod. The molding of the FlexPod is sloppy, which produces

1 excessive flash and causes the rubber to not bond well to the plastic, which in turn tends to cause
2 the rubber rings to fall off.

3 13. After Tocad started selling its FlexPod, Joby began corresponding with Tocad
4 through counsel about the patent and trade dress issues associated with Tocad's product. While
5 we were having this exchange with Tocad I learned that Tocad planned on redesigning its
6 product. Rather than moving forward with a lawsuit against Tocad at that point, we chose to see
7 if the redesign would address our concerns.

8 14. In late October 2007, Tocad introduced its new flexible tripod, the FlexPod Plus.
9 The new FlexPod looks much the same as the earlier FlexPod, and copies the overall design Joby
10 created for the Gorillapod, but it uses a different mechanical design. The FlexPod Plus is made
11 with an aluminum wire core. I got a sample of the FlexPod Plus shortly after it was introduced,
12 and I examined it, too. I found that the aluminum core used in the product's legs could be easily
13 broken, just by bending the leg back and forth several times. In fact, when I visited Tocad's
14 booth at the Photo Marketing Association show in Las Vegas this year, I picked up a sample of
15 the FlexPod Plus that was displayed on the counter at the booth. I noticed that the joint at the top
16 of one of the legs where it attaches to the body of the tripod was broken. In my view, the FlexPod
17 Plus is an inferior quality product compared to the Gorillapod.

18 15. After I saw the FlexPod Plus, it was clear at that point that Tocad's redesign would
19 not address our concerns about its use of the Gorillapod trade dress. We filed our complaint
20 shortly thereafter, on December 21, 2007. I am very concerned that Tocad's inferior tripods,
21 because they look so much like Joby's Gorillapod, will harm Joby's business and especially its
22 reputation for providing high-quality, innovative products.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct. Executed on this 27 day of March, 2008.

25
26 

27 JOEBEN BEVIRT
28

Exhibit A

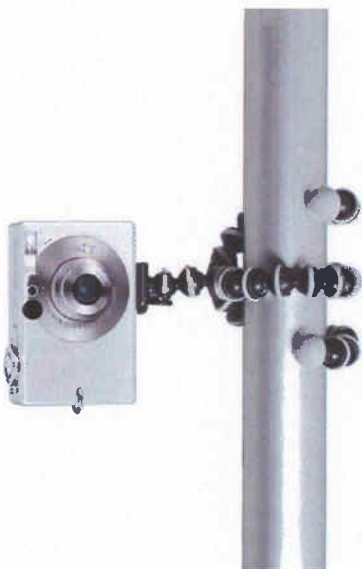


Exhibit B



Exhibit C



Exhibit D



original Gorillapod



Gorillapod SLR-Zoom



Gorillapod SLR

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

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16 JOBY, INC.,

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TOCAD AMERICA, INC.,

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Defendant.

Case No. 3:07-CV-06455 (SI)

**EXHIBIT E TO THE BEVIRT
DECLARATION: ONE JOBY
GORILLAPOD**

Date: May 2, 2008

Time: 2:00 p.m.

Courtroom: 10, 19th Floor

The Honorable Susan Illston

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22

MANUAL FILING NOTIFICATION

23

Regarding: EXHIBIT E to the Declaration of JoeBen Bevirt.

24

This filing is in physical form only, and is being maintained in the case file in the Clerk's
25 office.

26

If you are a participant on this case, this filing will be served in hard-copy shortly.

27

For information on retrieving this filing directly from the court, please see the court's

28

main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

1 This filing was not efiled for the following reason(s):

2 ___ Voluminous Document (PDF file size larger than efile system allowances)

3 ___ Unable to Scan Documents

4 X Physical Object (description): one Joby Gorillapod

5 ___ Non Graphical/Textual Computer File (audio, video, etc.) on CD or other media

6 ___ Item Under Seal

7 ___ Conformance with the Judicial Conference Privacy Policy (General Order 53).

8 ___ Other (description): _____

9
10 Dated: March 26, 2008

FENWICK & WEST LLP

11
12 By: Virginia R. DeMarchi
13 Virginia R. DeMarchi

14 Attorneys for Plaintiff
15 JOBY, INC.

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Exhibit F

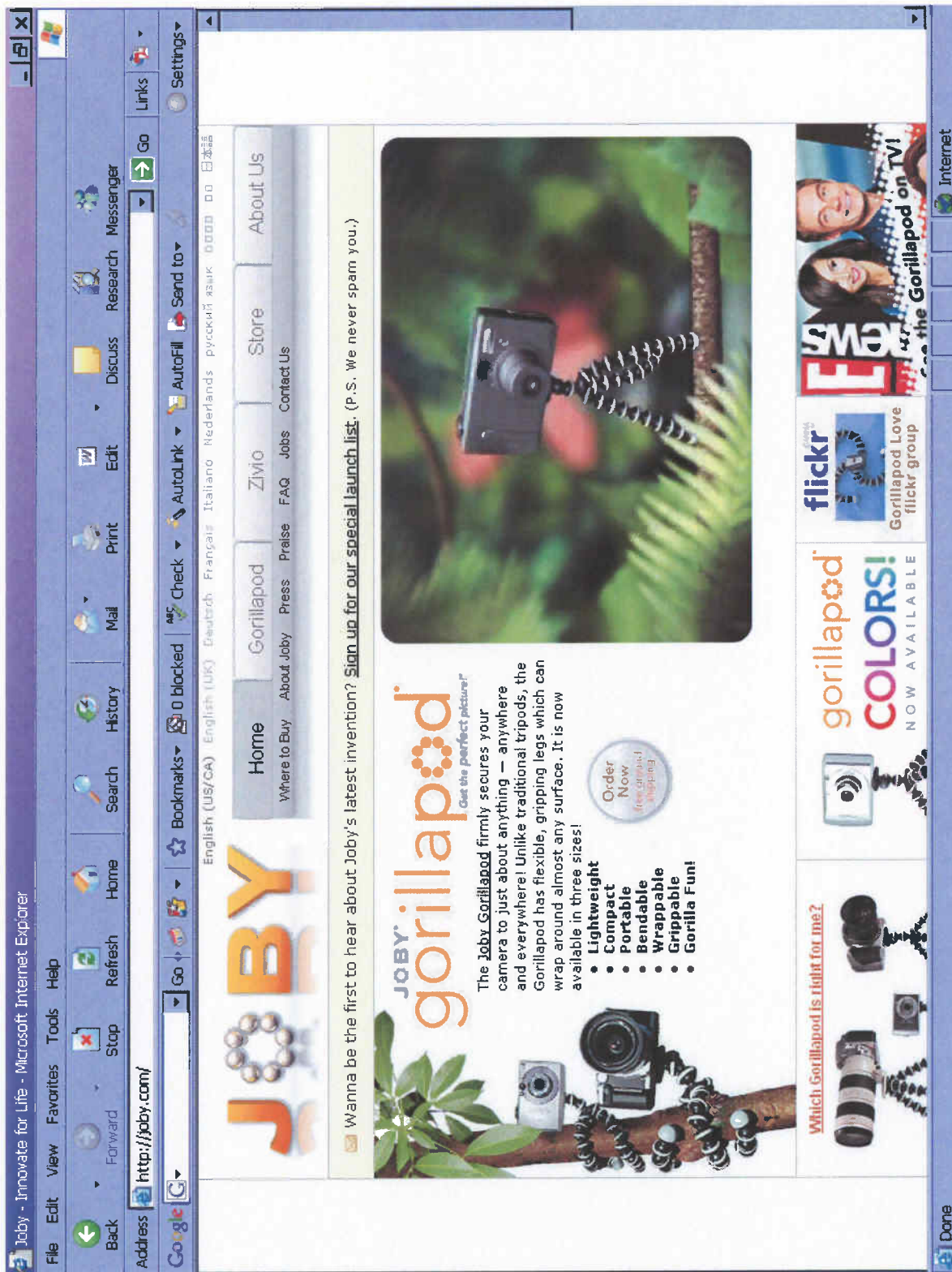


Exhibit G

Digital Photography

Every year, more than one million photographs captured in some of the harshest conditions on the planet arrive at *National Geographic* magazine. From our trials and tribulations, learn how to conquer your own digital photography challenges.

Grip Like a Gorilla

Posted Aug 29, 2007

Our early ability to create tools is largely due to our dexterity, most of which we owe to our opposable thumbs. That same ability to grip can also be found in a handy little gadget that I carry with me five days a week.



I commute to work with a small **Patagonia** backpack containing my laptop, a compact digital camera (with extra battery) and an original **Gorillapod**. Since I first got my hands on the Joby Gorillapod over a year ago, it has had a home in my daily kit.

Weighing just 1.6oz (45.3g) and measuring only 5.9 inches (15cm), this flexible little wonder is covered with rubberized joints that help make it grip to most anything that you wrap it around. That dexterity allows me to use most anything—a chair, lamppost, stair rail or tree limb—as a secure mount for my digital point-and-shoot.

Since the original Gorillapod rolled out over a year ago, Joby has introduced two more, designed for **SLR** size cameras, able to handle up to 6.5 pounds (3000g). Additions to the lineup next week will be five stylish Gorillapods (below) that will allow you to color coordinate your couture collection of digital cameras.



If that doesn't get you excited about the Gorillapod, take a look at what ingenious flickr users have done with their malleable tripods. My personal favorite is the dog collar cam.

— Ken Geiger

06
AUG **Gorillapod SLR Zoom**
Posted by John as Accessories, Digital Cameras



The [Gorillapod SLR Zoom](#) builds on top of the SLR model we [reviewed](#) late last year. It now supports heavier cameras and camcorders, up to 6.6 pounds compared to the SLR's paltry 1.7 pounds.



Like all of the Gorillapods the special sauce of it is the flexible joints that allow you

to wrap the tripod around various objects and get shots you never could before. It's by far our favorite photographer accessory that you simply must have, it's always there when you need it and it isn't too bulky. Unlike the standard SLR model it does not have the quick-release plate, but you can attach a tripod head to the SLR Zoom which allows for more versatility.

Don't expect it to replace your current tripod, but it certainly is a great companion to one. It costs \$55 and a smaller version is available for regular point-and-shoot cameras.

Pros

- Supports up to 6 pounds.
- Compresses into a small, and light package.
- Extremely versatile.
- Allows use of a tripod head for more control.

Cons

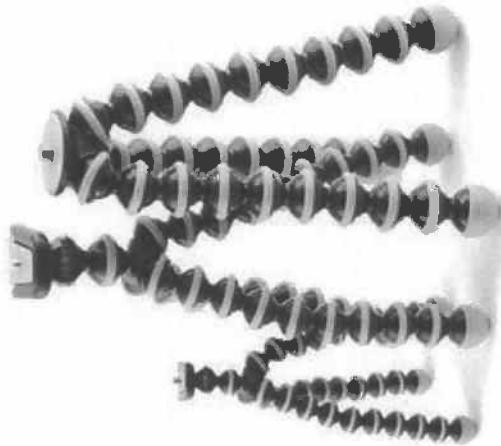
- No quick-release plate.

Final Verdict

5 out of 5 stars.

CALUMET REVIEW: GORILLAPODS
**The World Is Your
Tripod**

By Ryan Klos, Calumet Photographic



When I first saw the original Gorillapod, I thought, "Cool, I can mount my point-and-shoot onto anything." When I saw the Gorillapod SLR and then SLR-Zoom, I thought, "Yeah right, put my \$2,000 camera and lens setup on that?" I have a feeling I wasn't the only skeptic. It looked more like something that should be stomping through city streets, smashing buildings and shooting laser beams from its eye in a 1950s monster movie. But after I had the chance to get to know them, Gorillapods proved much more friendly and trustworthy.

Gorillapods manufacturer, Joby, has made quite a stir with their unique, flexible, grab-onto-anything tripods and have even grabbed a 2007 Innovative Digital Product award by Digital Imaging Marketing Association. Not only is Joby coming up with innovative products, they're also a proponent for a greener tomorrow. One percent of their sales are donated to the preservation of the planet, and they also give you the option to purchase their product with or without packaging (from their website). Imagine the environmental impact if every company was so environmentally conscious.

The Products

The Gorillapod line consists of the Original Gorillapod (for point-and-shoot and compact digital cameras), Gorillapod SLR (for lightweight SLR cameras and camcorders) and Gorillapod SLR-Zoom (for SLR cameras with a hefty zoom lens attached). Each model has round rubber shoes at the bottom of its three legs and a rubber ring around each bulbous joint, several of which make up the legs. The rubber is key. Friction and gravity have everything to do with placing a camera and Gorillapod.

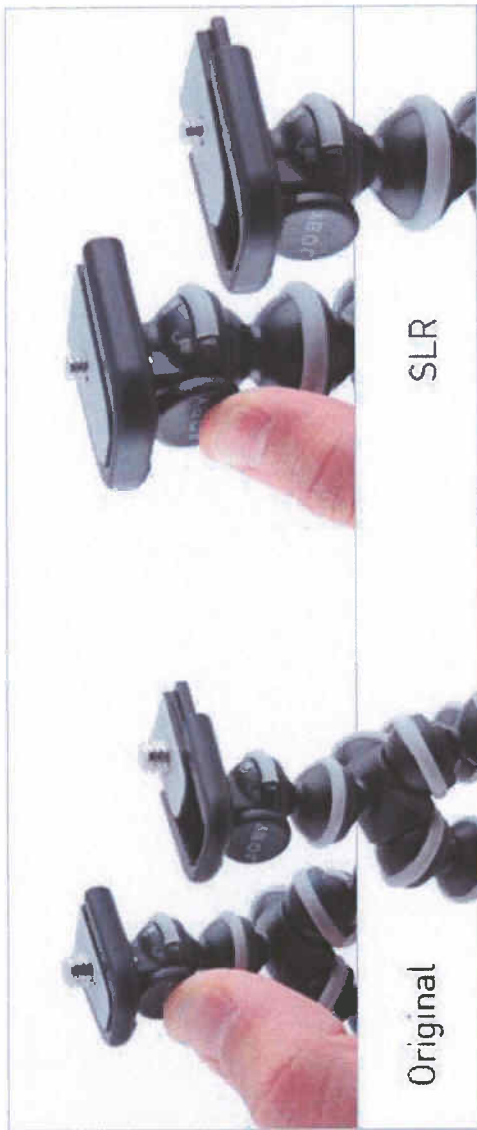
Gorillapods

[Shop for Gorillapods »](#)

Light Like a Gorilla



Sometimes it's not the placement of a camera that's a problem, but the off-camera flash. Imagine the possibilities of flash



The small and medium versions, Original and SLR, include a slim quick-release plate that slides into a locking head. The plate is so slim that leaving it attached to the camera is easier than repeatedly taking it off and putting it on. And don't worry about taking up extra room, it's thin enough to easily slip into most camera cases without any trouble while still attached.

placement if you could mount your flash to a Gorillapod SLR. Joby's on top of it. They've introduced a quick-release flash clip for the SLR Gorillapod. It easily slips into the quick-release mount like the regular plate but has contact points for your flash. Get a couple of these Gorillapods and flash clips and you could outfit a forest with studio lighting in no time. These will be available at Calumet very soon!

More Product Reviews



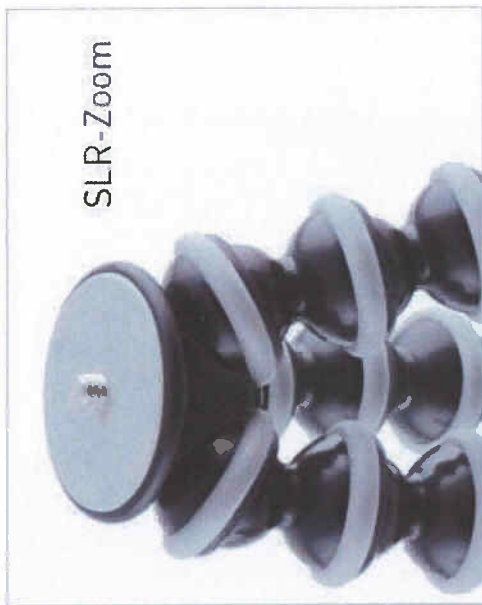
Adobe Photoshop Lightroom
Getting the Most Out of RAW



Dust-Aid
DSLR Camera Sensor Cleaner



ExpoDisc White Balance Filters
Accurate WB Made Easy



SLR-Zoom

The Gorillapod SLR-Zoom does not have a quick-release plate. Instead, the base screws directly into your camera or tripod mounting ring on large zoom lenses. Attaching the camera directly to the base provides more stability, especially since there are no pivot joints directly beneath the camera, just legs. This means the camera's weight is more centrally, and consistently, distributed on the Gorillapod.

Testing: Original Gorillapod

Max Weight: 9.7 oz

I tested the Original Gorillapod with a Canon SD1000 and it performed like a champ. The quick-release plate easily screwed into the bottom of my point-and-shoot and snapped into the slot nice and snug. For grins, I attached the Original Gorillapod to a door knob. Not entirely inconceivable. You never know where you'll be or what's around, right? It worked great. Its small size allowed for the legs to grab around the knob and hug it tight. The rubber on the legs and the ability to conform to almost any surface kept the camera and Gorillapod firmly in place—no slipping or wobbling, either.



Gorillapods
The World Is Your Tripod



Zigview S2
Real-time DSLR Viewing



DxO Optics Pro 4
Pro Image Enhancement In a Snap



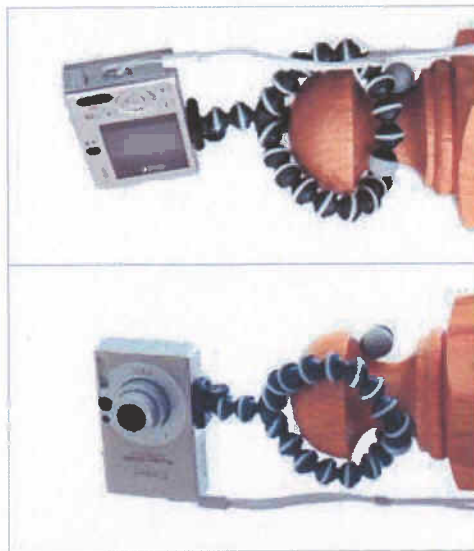
PocketWizard Plus II
Wireless Wizardry



LowePro Computrekker Plus AW and
Tamrac Expedition 7



In all other applications it worked just as well. As this photo demonstrates, friction and gravity are your friends with any of the Gorillapods. Knowing its strength allows for maximum creativity when looking for places to mount your point-and-shoot on the Original Gorillapod.



The legs are easily molded around all types of objects. Apparently I was on a mission to see how it worked on round items, and in each case I was confident that my camera would be fine. The Original Gorillapod is small enough to stick in your back pocket or keep in the glove box of your car. Its small size makes it easy to setup in tight spots—such as door knobs—and wrap around or hang off anything. Your own creativity is the only limiting factor. For most point-and-shoots, the Original Gorillapod is more than enough.

Testing: Gorillapod SLR

Max Weight: 1.75 lbs

I originally tested the Gorillapod SLR with my Canon EOS 30D (with battery grip) and 28-70mm lens. It proved to be too much so I removed my battery grip and attached an 85mm. Much better. The Gorillapod SLR handled this just fine in the upright-not-having-much-fun position, but on more challenging angles the weight of my camera and lens were too much. The Gorillapod's neck joint couldn't handle the weight. That said, the Gorillapod is a think outside the box kind of device to begin with, so I got creative with my setup. By twisting one leg to pivot its would-be knee on the shelving I was setting up on, I was able to support the weight of the camera on the foot of the pod. Once I got used to the physics and possibilities of the Gorillapod, figuring out creative ways to support the camera was easy and fun.



And, of course, the round test. The larger size of the SLR compared to the Original allows for a stabilizing leg, as you can see in the photo. The SLR model may need a little extra support in the neck, which can easily be had by arranging the legs to support the body. Or, remove the neck from the equation and go with the Gorillapod SLR-Zoom.

Testing: Gorillapod SLR-Zoom

Max Weight: 6.6 lbs

This one will be getting the most use from me when using my 30D. This time there was no problem with the extra weight of the battery grip and 28-70mm lens. As there is no quick-release plate to use, I screwed the base of the Gorillapod SLR-Zoom into my camera and tightened it from the bottom with a screwdriver. Everything felt much more stable than the same camera setup on the Gorillapod SLR (which isn't surprising considering I overloaded it). The legs on the SLR-Zoom are thicker and a little bit longer than the SLR, the feet are also larger and the joints felt tighter as well. I was more trusting from the get-go to put my camera's full weight to the test.

In most straight-on applications—horizontal shooting, that is—everything worked fine. I found the strength and stability of the Gorillapod SLR-Zoom good enough to gain my trust in attempting to attach it to anything. And because the legs on this model tend to be more rigid, there were more ways to use opposing forces and flagging techniques to stabilize the setup.



Vertical shooting offered a few challenges because the weight of the camera and lens on the Gorillapod SLR-Zoom. I found that setting up in the vertical position required more time to ensure stability — maybe had something to do with feeling good about mounting an expensive camera setup in a precarious